

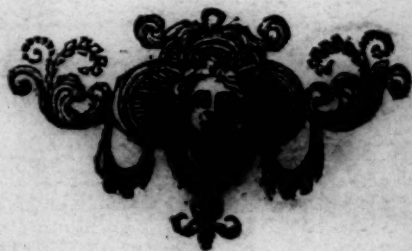
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CONSIDERATIONS
ON THE
BILL
FOR PREVENTING
Clandestine Marriages.

Nolumus leges Angliæ mutari.

By a FREEHOLDER.

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L O N D O N :

Printed for W. OWEN, near *Temple-Bar*.

M.DCC.LIII.

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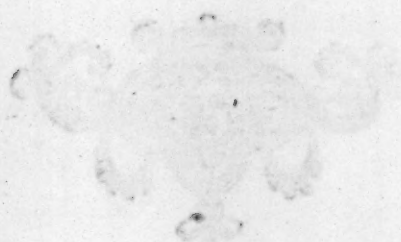
CONSIDERATIONS

ON THE

B I L L

FOR PREVENTING

Clandestine Marriages.



L O N D O N :

Printed by W. Owen, and John Day.

M.DCCC.LIII. [1853]

CONSIDERATIONS, &c.

BY the British constitution a larger number of individuals than the forms of other governments will allow are admitted into our most important councils, to propose, to debate, and to decide on all measures of foreign or domestic policy : among the advantages, that arise from this entire liberty which every person, in either house of parliament enjoys, of moving such alterations in our ancient laws, as he thinks expedient, there will, from human imperfection, result some inconveniencies, which other free states have guarded against, by selecting a part of their legislature, to examine in the first instance, into the propriety of those proposals, to which a more general consent is afterwards necessary.

Those governments that have taken this precaution, have proceeded upon a principle, which in general is true, that a considerable part of the perfection of political œconomy, consists in the stability of regulations once received, and that every deviation from
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these not founded on solid reason, and on strong necessity, is in itself an evil.

What these Legislators have endeavoured to check and restrain, with us is left open to the direction of all those by the majority of whose opinions our laws are constituted; but it remains certain in one case, as in the other, that much danger, and confusion is to be frequently expected in departing from those usages, which, having been long established, may be naturally supposed most suitable to our exigencies, although the immediate reasons to which they owe their origin, may not at first sight appear altogether conclusive.

A member of our parliament is obliged to the greater degree of circumspection in cases of this sort, as he imparts his opinion to a numerous assembly, where names and prejudices will always have stronger effects than in a narrower circle; but he is more particularly called upon to summon all his prudence, to lay aside every prevention, and even to be upon his guard against the virtues of his own heart, where the specious appearances of a laudable aim, court over to his side the passions of others: the calmest and coolest exercise of reason is then most necessary, both because danger under the disguise of security, is easily admitted, and because when once it has found an entrance, from the attachment of mankind to prejudices,
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and a false shame which forbids them to combat against the forms of good, where the reality is wanting, it is with great difficulty afterwards expelled ; a tax improperly laid may be taken off, a branch of commerce injudiciously stopped may be opened, but a law against corruption in elections, a law against gaming, a law in short with any popular title cannot with the same facility be repealed, although its inutility should be obvious, although it could be demonstrated productive of a greater mischief than it was meant to remove.

As I am, after a very serious and impartial examination, of opinion, that the bill against *Clandestine marriages*, is to be ranked among these specious evils ; I presume on this occasion to alarm the vigilance of the public, and as far as my degree of abilities permits, both to assist the more recollected judgment of those who being present, have been, in any steps already taken, misled by affections in themselves laudable ; and to awake the attention of those who were absent during that late period of the sessions, when this most important question was, without ill intentions, but I think injudiciously, proposed.

When I call this a most important question, I shall not be thought by any one, to use this term as a mere common phrase to captivate attention ; however we may differ as to the expediency of this law, we shall all

agree in one point, which is, that the interest, the happiness, the security of thousands now in being, depend on this law; the property, the condition, the legitimacy, the very existence of millions, yet unborn, depend on this law; the quiet, the safety, the commerce, the riches, the number, and the strength of the nation depend on this law: I shall therefore shew it in every light I can, to individuals in different ranks of society, to men, to members of the same political community.

I have ever entertained a high reverence for that aristocratical part of our constitution, by which an hereditary nobility tempers the power of the commons, and is admitted to a great share of real authority, to a third part of the Legislature; it is not my present aim to examine whether their weight is, or can be, or ought to be, exactly equal to that of the Commons: such as it is I desire to support it, not from a blind prejudice in favour of birth, the effect of chance; not from the respectful esteem I deservedly have for many of their persons and characters, but from the use and advantage that accrue to this nation, by the establishment of that rank and order of subjects.

Whatever then touches their privileges, their hereditary rights, or their independency will always affect, and revolt me; but when none of these points is concerned, I look on them

them, with the same impartial regard that is due to the rest of my countrymen, and as our domestic policy in successions, and matters of civil property considers them as other subjects, so are they to be considered in contracts of marriage.

For as the proofs of descent, and antiquity of race are not necessary to their first reception into this order, an uninterrupted series of noble alliances is not requisite to preserve the titles by which they remain there, or any benefit thence derived to themselves or others.

Far different is the state of nobility in other parts of Europe, in monarchies where they are the best because the only barrier against despotism; where their exemptions, privileges, and honours extend through all the branches of a numerous posterity; it is there perhaps necessary to draw a line between them, and the rest of the people, and to cherish that high spirit which by preserving ranks and orders shuts out the level undistinguished scene of slavery, where mankind are all equal, because no body is any thing; it is there judicious to keep up the distinction between noble and ignoble alliance, by an established and exclusive right to certain employments and emoluments military, ecclesiastical, and civil, but even there it is unjust and tyrannical to extend to the whole body of the community, those particular

particular aristocratical laws which are constituted for the preservation of that species of nobility, and for the support of that spirit with which for the common good they ought to be animated. The Julian Law did not restrain the conditions of marriage among other subjects, though it forbade the alliance of senators or their families with those persons whose fathers had been emancipated, or had exercised arts by them deemed dishonourable : but here, where their own sons have no distinction, where we have better and surer guards against absolute power, the spirit, the virtue, and the interest of the aristocratical part of our constitution is moderation, it is their interest, and that of their families.

I am not indeed afraid that they will move a Julian law, that they will desire this line to be drawn between them and the people, since arts and commerce, and philosophy have introduced politeness, ease and riches ; since they have introduced a way of thinking far more reasonable, and in my opinion far more noble than those dark prejudices of barbarous ages ; there is but little danger that they will propose a measure to lessen the union, and harmony of the state, and to defeat their own private pecuniary advantages.

In this country a law by which marriages are restrained, by which the propriety of them

them is preferred to their ease and frequency, can affect our nobility but in one light, in the benefit which arises to them from the fondness shewn by men who have acquired large fortunes in trade or professions, to contract alliances with them, or with the heirs of their peerages, and in the greater scope which this extension of parental authority gives to the operation of that fondness, by a certain degree of which the marriage of great heiresses might become a monopoly for peers.

This interest as a private motive will not, perhaps, appear a very cogent reason to the Commons, they will therefore call in to their aid a public motive, they will urge the general interest of the nation in their independency: that it is right they should have independent and plentiful fortunes, I confess; that it is necessary they should have over-grown and exorbitant fortunes, I deny. The expences which in former ages they were called upon to support are, I thank God, diminished; the crowds of their retainers, followers, and vassals are now changed into a free, a thriving, and an industrious commonalty; nor is the dignity of a nobleman burthened with more charge, than the state of a gentleman; the answer to this plea is in both cases the same—They lose nothing but the not having made a possible gain.

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Add to this, that they actually have fair and just advantages in this point, advantages not arising from the partial biases of a law, but from the necessary consequences of the useful and salutary pre-eminence of their station: nature, indeed is equal in the distribution of her gifts; but if there is a difference in the polish they receive by education, this is to be expected in their favour; the shewy and the modish accomplishments by which a female heart is often accessible, are with them improved by an easy and an early access to courts, and to persons of the first rank, the vanity of the sex, their love of title, place, and precedence, the coercive power at present left to parents and guardians all co-operate to aid their pretensions, and it is proved by experience, that these advantages turn the ballance on their side.

I shall next consider how far men of property are affected by this law: as a nobility is necessary by one part of our constitution, it is also expedient for another part of our constitution, that there should in this kingdom be a certain number of commoners of very considerable estates, although it is not equally requisite that those estates should remain always in the same hands: the utility of this class of subjects in a free state where there is a mixture of monarchy is derived from this principle, That on any violent or insidious attack of the Crown upon liberty,
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the union and concert of persons under this description who are likely to lead and influence numbers, is more easy to be effected, and to be supported, than the agreement and co-operation of numbers, equal in their pretensions, unrul'd, and unguided by a submission which, in this case must be voluntary.

Though families may flourish or decline, though great names may be lost in obscurity, while races now unknown and undistinguished succeed to their splendor, yet if there are riches in this country, a certain number of persons under this denomination cannot be wanting; the rights of eldership which are here most advantageous to them, and the nature of wealth which always tends to accumulate, and to flow into one mass exclude any apprehension of their failing.

But I labour under another fear, I see a greater danger on the contrary side, arising from the too unequal distribution of property, from that known, that ancient, that formidable rock, on which all free governments have split, which all wise legislators have marked out as the object of the utmost precaution, which they have endeavoured to avoid by Agrarian laws, by facilitating changes in property, by every discouragement to the avarice and ambition of parents; in the country, in the landed interest, I see a melancholy change, I see the most useful
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and valuable, though not the most splendid order of society almost extirpated and swallowed up by the exuberant increase of particular fortunes.

Now as I have read and observed and believe upon solid principles which cannot be denied me, that a degree of equality among the fortunes of subjects is advantageous, and essential to liberty, I wish to see in this country a few great men, with a numerous gentry and yeomanry; and did I not think it impious to invade the sacred rights of free election, the tenderest, most domestic rights of individuals, I should think the law of * *Phaleas* far wiser and better, that promoted marriage between persons of unequal fortunes, that even was so far of an Agrarian spirit, as to forbid the accumulation of property by marriage, beyond a certain measure of extent, than this aristocratical law, which contains under the name of a remedy for an ill I do not fear, a latent poison to ripen and inflame a mischief, which, I know, has already made too great a progress.

Having gone thus far in laying down a map of the general situations of mankind, let us here pause, and look back; let us enter into a more particular description of the points which this innovation may invade.

* See Aristot. Pol. lib. 2.

It is very near unnecessary to observe, that men of quality and property will be most affected by the clauses, which render the contract null if not public, or extend the authority of parents so far as to make it void, if concluded without their consent.

My arguments have hitherto been bent against the general necessity, and expediency of this law ; I shall proceed to consider on what natural rights this bill is founded, what ills it may prevent or diminish, what ills it may create or increase in the stations of life I have mentioned.

I must be most unfit for private or public society, if I rejected the principle of filial duty ; which I consider as the earliest and most natural of all obligations ; I will allow it to have no bounds, in cases where its offices tend to the support and well being of the parent ; but where the interest of the child is only or chiefly concerned, I shall not so easily admit the justice or propriety of despotic parental authority, as I apprehend all unlimited, or immoderate power to be ill suited to the imperfection of human nature.

Before the formation of governments each family was a little state, the head of it at once a father and a magistrate : from the union of these families proceeded the first political societies, and they confirmed in early times that authority they found established at their origin, as one of the most

simple and easy methods of subordination ; the Romans ever in a high degree preserved this œconomy, and confessed themselves to be distinguished from other nations by their attachment to it. The Justinian institutes say *Jus autem potestatis quod habemus in liberos, proprium est civium Romanorum nulli enim alii sunt homines, qui in liberos talem habeant potestatem, qualem nos habemus* : but those who extol the civil law in prohibiting and annulling marriages entered into without the consent of parents, should remember that the same jurisprudence gave the Roman father a power of selling the son to slavery, or of putting him to death——Russia could do no more.

The opinions of other law-givers have varied greatly on this point ; many of them have carried their reflexions and refinements so far as to consider all the youth of their country as the common children of the state : among these we may reckon the ancient Persians, Lacedæmonians, Samnites and Cretans, with many others.

Now though the total annihilation of parental authority, and filial obedience, with the substitution of political *succedanea* in their room, is too great a preference of art before nature, and too complicated a deviation from the plain and primary order of the world ; these instances will at least prove that there
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can be no danger in the moderate restraint of what has been safely taken away.

In private settlements, the invention of mankind alarmed by their experience of injustice and abuse, is every day at work to temper and confine the parental power. Where is the father, or the guardian that will trust it with the fortunes of children that may be born of his daughter, or his ward? Do not we, before that union to which they owe their existence, pronounce upon their fate, and portion out their future property? We trust the laws, we leave as little scope as possible to this power, because we know it liable to error and caprice; because we find it capable of partiality where merit is equal; nay, capable of preferring deformity of mind and body to virtue and perfection: shall we then increase, by a public act, what we continually study to diminish in all our private acts?

The friends to this bill, as the great and general maxims of government cannot be wrested to their side, will descend to particular cases of local evils; they will paint out the distress of the man of property, of the careful, the prudent father, whose daughter, by her disobedience, shortens and embitters his decline of life: they will then ask, will you not pity so affecting a distress? will you not prevent the anxiety that foresees and fears it?

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Where is the man that will not be touched with pity, when real affection and tenderness of heart suffers? but if the sound and solid maxims of government and policy direct us from first principles of duty, to prefer the public to every private concern, we can only pity. Whether this law itself can relieve, shall hereafter be considered.

The circumstances of human affairs are so various, that it is impossible for general regulations to comprehend all of them : some things must be left to the prudence of particular men in their respective situations, some misfortunes must be left for care and circumspection to guard against, in cases most important to our healths, our properties, our lives, and our families. In this concern the marriage of his daughter, a father is not left without a reasonable and a great share, both of influence and coercive power; he is the master of all the first impressions she receives; he has every opportunity of implanting and cultivating the seeds of religion, virtue, and honour: this very danger of her disposing unworthily of herself, may produce a solicitude in his thoughts followed by a strictness in her education. Those precautions which are a defence to her as a daughter, will be attended with advantages to her as a wife and a mother ; too great a relaxation of manners may take place, if all vigilance on his part becomes unnecessary ; he has besides all
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means of obtaining her love and respect, and of establishing his authority over her mind; and as we suppose this daughter the object of his fond attention, in case of any distant or immediate danger he will, in all probability, be alarmed, and put upon his guard, to employ every measure of remonstrance, and advise every method of restraint and coercion. The disposal of his property, for all, or for a part of which she is perhaps dependent on him is likewise an effectual and considerable instrument in his hands.

Clandestine marriages are usually attended with the resentment of parents, but do not all equally deserve it; there are many degrees between a breach of respect, and an infamous violation of duty; if affection sometimes is ill rewarded by a disgraceful revolt, caprice and obstinacy only are at other times provoked; avarice and ambition only are disappointed: and thus it frequently happens, where there is an equality of fortunes, or a competency on either side.

Let us next consider the situation of a parent, after the establishment of this bill into a law; let us see what part of his distress is removed, and what is aggravated: let us appeal in these points both to reason and experience.

It will be allowed me, that the annulling a marriage, after consummation, is in itself an evil, and that it cannot be defended but

as the means of preventing an improper marriage. I will now state the strongest case, in which the violation of a solemn contract can be justified, and I will examine how far this bill is a means of prevention, or a remedy for a misfortune that has already happened.

I will suppose a young woman with birth, riches, and beauty, infatuated with love for an indigent and despicable wretch; in this situation, will the just anxieties and apprehensions of the parent be remov'd?

It is granted that no penalty, denounced against the parson who reads over the service of matrimony to this couple, will be sufficient to prevent this misfortune; otherwise the annulling clause must be given up as unnecessary; and this is rightly granted, for it is found to be so in France, where a priest is never wanting on these occasions, tho' the offence is punished by the gallies for life.

I must state this wretch as a man of desperate fortune, restrained by no principle of virtue or honour, from the ruin of a young lady, as having access to her, and the strongest ascendant over her passions and determinations.

All this being laid down, he can still perpetuate his villany in several different ways.

In the first place, he may debauch her, in hopes of being able to marry her afterwards, to cover that disgrace.

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Secondly, he may employ his casuistry, assisted by her inclinations, to seduce her by a ceremony, which both parties know to be legally insufficient, but which may satisfy her scruples, and which she may look upon as a tie of honour and conscience, tho' not of law; and this very often happens in countries where the consent of parents is necessary.

Thirdly, he may abscond with her in some distant obscure corner of the country, and there, under real or feign'd names, wait for the publication of bans.

Fourthly, he may run away with her, into some foreign country, and marry her there, where, if the contract has the necessary circumstances required at the place of it's celebration, it will, in all respects, be perfect and valid as to its effects and consequences here.

In either of the two last transactions, the father will be left in the same situation as before this law.

In the two first he may chuse whether he will see his daughter very unfortunately married, or a prostitute; both are great distresses, and only remediable by a most shocking alternative.

In Holland and Swisserland, where *clandestine marriages* are prohibited, and may be annulled, they are very frequent; and even in France, where so great a severity as that I have mentioned, is exercised on the instru-

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ment of this offence, where a capital punishment is inflicted on the party who has seduced a young woman by a marriage thus circumstanced, or who is even proved to have carried her out of the protection of her parents, with the design of such a seduction, where women are shut up in convents to prevent these practices, those who have frequented their courts of justice, will tell you that these instances are not uncommon; both their serious books and their writings of a lighter kind, which are pictures of the times and manners, contain, and are founded upon incidents of this nature.

But as private calamities are the subject of my present reflexions, I shall mention some of another kind. I must, in the first place, observe that this law is mitigated in all countries where it prevails, by the legitimization of children in case of subsequent marriage; but that we are here proposing totally to set aside all possibility of any benefit to them, on the majority of their parents, or on the reconciliation of their families: I will now state another case.

A young lady shall be in love with a person not unworthy of her; the father, from caprice, avarice, or ambition, refuses his consent to their union, but they, prompted by the warmth of youth, and urged by their mutual passion, justly confident of each other's constancy and honour, conclude a marriage, which is deficient in some legal
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circumstance ; she is deserted, disgraced, discarded, and left without any resource but what she finds in her own heart, and in the tenderness and fidelity of her lover ; while her children, a blessing, and a comfort to her, but that the hardness of his heart, who ought to protect and cherish them, renders these objects of her fondness, the most affecting circumstances of her distress ; while her children, I say, grow up in every perfection and endowment of mind and person. But at length, the proud, the covetous, the stern father, is touched with sentiments of humanity : vain is every return to nature or compassion, the child deserving of a better fate, innocent even of the human frailty for which he is to suffer, must remain for ever deprived of each circumstance of birth, honour, and property, while the parents see all their posterity eternally excluded and condemned, by the rigid relentless law, then will they have reason to cry out, *Leges rem surdam, inexorabilem esse, non esse gratiæ locum, non beneficio, non irasci, et ignoscere posse, nihil laxamenti nec veniæ habere, si modum excesseris, periculosum esse in tot humanis erroribus solâ innocentia vivere.*

And shall this reproach be laid on the law of England, of which it is the glory, that it is a law of mercy ? shall that law which in its punishment of crimes, is, of all others, the most cautious and the mildest ; be, of all others, the dearest, the severest,
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the most inexorable, the most irrevocably cruel to venial human frailty ?

A mutual passion shall have carried two lovers beyond their own first designs, beyond the bounds of innocence and discretion, their esteem and tenderness for each other shall increase and continue, both shall desire to draw the veil of marriage over their rashness and their frailty, shall we, for the weakness of a moment, disgrace a whole life of virtue ? shall we make the situation of both ignominious ? or shall we leave them the power of concealing, and antedating the time of their legal union ?

It would be endless to recite the various modes of distress, the innumerable calamities, that may happen to generous and delicate minds, to persons bred up in affluence, and educated in the ways of honour.

Society is hurt by the power of annulling marriages, in the uncertainty it introduces as to the birth, and state of subjects ; it is important to fix their several conditions ; it is for the good of the whole to banish all confusion among the parts, to give to every member thereof the most advantageous situation he can possess without prejudice to others : this principle is violated by bastardizing the issue of those who marry without consent of parents ; for illegitimate children have no rank in that general chain and order of dependence

pendence necessary to harmony, and mutual assistance among mankind.

This leads me to a most terrifying reflexion, alarming to all degrees of men, dreadful to men of property: after a long unlimited period, after the death of both parents, perhaps after the extinction of every evidence but that which is produced in behalf of a particular claim; among the multitude of circumstances specified by this bill as necessary to constitute a legal marriage, on the meaning of which, the wisest and the most learned, may possibly differ, there shall, I say, be suspected, be found, and be proved, a deficiency in some one article, and this proof shall be valid notwithstanding the consent of parents, and the public notoriety, which must all give way, as they are established only by presumptions in an infinity of cases.

Let us recollect a very recent scene of disorder, which happened by some doubts raised about the validity of wills, and the incapacities which might invalidate the testimonies of subscribing witnesses; what terrors did not this produce! yet wills are made upon very serious reflexions, often by advice of council, they may be altered, they may be repeated in better form; and marriage is one single act, often concluded in the heat of youth, and in the hurry of the passions: what

what litigation, what confusion, may by this door be let in !

I now come to those for whom government is made, to the many; and let me here remind such as the pride of family, such as the long continuance of hereditary property may touch, that it is these they represent, that it is from these they hold their power, that it is their interest they ought to consult, that the house of commons is founded on the democratical part of the constitution.

It will not be denied me that the importance, the strength, and the power of every state depend on the multitude of its inhabitants; and it is equally certain that, in a country of trade and commerce, which has rivals in every branch of its product and manufactures, this increase of numbers acts in a multiplied proportion, that the more hands there are, the cheaper labour of all sorts will be, and consequently a market will be the easier found for that labour, and thus individuals in such a country, will prosper more or less as that country is more or less peopled.

And though I have endeavoured to prove that no class of men will be benefited by the alteration proposed in this bill, here I rest the main weight and stress of my argument; if it is calculated for the few against the many, I need say no more about it, if it tends to diminish a laborious and a prosperous commonalty it is sufficiently exploded.

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If we expatiate a little, and carry our views beyond our own times, and our own narrow circle of objects, we shall see that the populousness of nations has not depended merely on their climate, but has much oftner been owing to their laws and government, it will appear that the freest and best regulated countries (these are synonymous terms) have ever been the best inhabited.

Now I assert, that this alteration of our laws will diminish the multiplication of the people by marriage, and that it will likewise unnecessarily encroach upon their liberty, upon their just and useful freedom of acting as they please when they do not injure others.

Though nature will point out and encourage the union of the sexes, that union cannot be made beneficial to the state, unless it is conducted and confined by certain regulations: every disorderly commerce without or beyond these is at least useless to the public.

It is then the business of a legislator to engage, I might say to tempt and entice mankind to those ties which make their natural passions subservient to the good of the whole: nay, many of them have carried this idea so far as to lay taxes and marks of infamy on celibacy.

At Sparta those who persisted in their celibacy beyond a certain allotted age, were forbid to assist at their games and sacrifices, while the heads of families were indulged with

with immunities according to the number of their children ; the *jus trium liberorum* at Rome was founded on the same principles.

It has not then been a general opinion that mankind were so favourably inclined to that restriction of the commerce between the sexes in which the public finds its advantage, as to make all care and attention in this point unnecessary.

On the contrary, religion and policy have both been called in to promote marriage ; it was a tenet of the ancient Persian faith, that the three actions most agreeable to the divinity were to plough a field, to plant a tree, and to beget a son ; the immense increase of the Jews so often persecuted has been owing to their belief of a Messiah to be born among them.

If then the natural tendency to marriage is not strong enough, if, far from thriving under opposition, it wants encouragement ; we may look upon every bar and impediment placed in its way as imprudent, and impolitic, upon every delay and difficulty as injudicious and dangerous.

As the extension of authority in parents and guardians, with their power of annulling marriages contracted against their consent, chiefly affects the upper rank, the delay and difficulty of celebration chiefly affects the many.

Where a clear advantage arises to the public, it may not perhaps be wise or necessary
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to give the individual on whose will it depends too long a time to follow his caprice, or even to reflect on his own private interest: where refinements and delicacies of education make many ingredients requisite to happiness, a more mature consideration may be expedient; but it is sufficient for the multitude to consult the present voice of nature and inclination. A month's residence in a particular parish, a week's previous notice to the minister, three sundays on which the banns are to be published, these are circumstances not easily complied with by all persons, and create a delay which, from the inconstancy of mankind, will break off many marriages, in which the parties would have found their account, and the state an increase of subjects.

Add to this, that from the nature of our laws for the maintenance of the poor, particular parishes are alarmed at that very multiplication of inhabitants, for which the public ought to wish, and that every art imaginable will be practised, during the long interval ordered by the law, to excite, or to encourage irresolution on either side, while perhaps the priest leagued in the same interest with the vestry, raises every doubt, for which his new situation in this point of his ministry, can be a possible excuse.

It is found by experience, that the cheapest, the easiest, and the most open shop of marriage is the most frequented; we may

very safely conclude from thence, that the more delay, circumstance, and ceremony we introduce, the more our number of customers will diminish.

Before I proceed to observations of a more general nature, I shall mention two more articles : the case of precontracts, and the power intrusted to guardians,

As to the first, as I conceive a long and uncertain engagement without consummation between two persons adult, to be contrary to those general principles I have laid down, I shall readily approve of its being declared null and void.

I need not perhaps, after having condemned the power of annulling a marriage once consummated, with which this bill invests a parent, declare that I think it improperly placed in the hands of a guardian; but I shall add, that I think every objection still stronger in the latter case; a father may mistake the interest of his child, but must be generally presumed to mean it, a guardian may be liable to temptations of different kinds.

He may have relations of his own whose pretensions he may wish to favour, and he may in consequence reject all other offers proposed to him ; the Roman laws were so sensible of this abuse that they have very particularly guarded against it : *non solum vivo tutore, sed et post ejus mortem, ejus filius tutoris, ducere uxorem prohibetur eam cujus tutelæ*

tela rationi obstrictus fuit pater. Digest. lib. 23. tit. 2.—67. The same law extends to the father and brother of a testamentary guardian.

He may have a separate interest of his own, if his ward dies without children.

And this leads me to a reflexion which may here be not misplaced: life itself is short, the time of child-bearing is still shorter; from sixteen to thirty-six may be a just medium in our climates, but more women are married before than after their majority; now if we make their disposal of themselves difficult till that period, we may often lose a fourth part of their time, and that, the very flower of their youth.

To conclude, I disapprove the encrease of restrictive laws which are not absolutely necessary; personal liberty consists in the power of doing every thing we chuse that is not unjust, and suffers by every circumscription of the natural rights we bring into society: of these the most ancient, and the most easy to prove is the freedom of choice in that union which must have preceeded even the formation of families: as it is wise to return to first principles in political government, let the voice of nature be consulted in our domestic policy: those are the freest who have the least departed from her dictates; on the contrary, I observe that in absolute governments, mankind are made slaves to one another that they may the more easily be sub-
jected

jected to a common master : it is for this reason, that the Roman catholic religion has been said to be best suited to arbitrary sway, because it is most effectual to break the mind to blind obedience. The same analogy will be found in every civil regulation of absolute governments, every step between man and man, in private and in different transactions is chalked out ; the vassal is made most dependent on his lord, the servant on his master, the wife on her husband, the child on his father, because it is useless and dangerous to accustom those to think, and to chuse, whose only business it is to obey : thus born and bred in each other's fetters they lead each other quietly to the yoke : but where the state is free, individuals are free, the peasant, the servant, the wife, the son is free, because the subject is free.

Beyond, nay sometimes even against, the strict letter of abstracted right and wrong, there is a genius, a spirit, and a taste in laws to be deduced from this fountain, which the more it is traced the more abundant will it be found in its several branches ; the rules by which the Russians govern their domestic transactions would not be received in France, nor those of France in England, because in all three the result of the whole being different, the combination of the parts which compose that whole must be different. Authority must in all its course taste of the supreme spring.

As

As this country is the freest in Europe in the relation between subject and sovereign, individuals are here the freest in their relations to each other : the laws and the temper of the people assist and act reciprocally upon each other. If you introduce a law which is contragenial, you so far alter and impair the genius of the people ; how dangerous it may be to violate that genius, how deep and complicated the consequences may be which attend the change of long established laws ; these are of all speculations the most abstruse, and the most extensive.

For political liberty, and personal liberty its consequence produce among my countrymen that energy of a spirit unbroken, unsubdued, and untrampled upon, which I always view with pride and pleasure : hence freedom of thought ; hence the magnanimity and extent of designs ; hence bold and daring efforts in execution ; hence new and adventurous attempts of every kind, whether in pursuit of fame or riches.

The wisdom of former ages knew how to cherish this spirit ; it was once a presumption that a law was right, because it was a law of England ; that it was adapted to our genius, because it had long been established here, and as a law of England, it was an object of love and respect ; what solid wisdom, what deep sense, what high dignity, what affectionate tenderness for their country,
 speak

speak in that great, that memorable, that
 truly noble answer of the peers to the crown;
 on an occasion of this kind, though not so
 important: *Nolumus leges Angliæ mutari.*

F I N I S

E R R A T U M.

Page 2 line 5 for direction read discretion.

24 MAR 66

